

Md. Aslam and anr. Vs. the State

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Court : Kolkata

Decided On : Sep-29-1965

Reported in : 1966CriLJ1231

Judge : K.C. Sen, J.

Appellant : Md. Aslam and anr.

Respondent : The State

Judgement :

ORDER

K.C. Sen, J.

1. This Rule was directed against the order of the learned 1st Class Magistrate of Sealdab whereby he has ordered issue of summons against the: accused petitioners under Sections 6(a), 6(e) and 18 of the1 Indian Boilers Act. The prayer of the accused petitioners is that this proceeding against them should be quashed.

2. The petitioners are proprietors of firm named and styled as Hind Rubber Industries at 2, New Tangra Road, Calcutta. What happened is that according to the petitioners on 28.1.1962 while Biswanath Mistry was testing the baby boiler at about 8-15' p. m. the boiler really burst, whereby Biswanath died and some other persons were injured. The Chief Inspector of boilers filed a complaint before the

learned Magistrate of Sealdah on 30.3.1962, under the aforesaid sections. The Magistrate took cognizance and ordered issue of summons against the accused petitioners. On 19.6.1962 the complaint was; dismissed under Section 204 of the Criminal P.C., by the? Magistrate as no copies of the complaint were filed. Thereafter the case was restored and the accused, petitioners were summoned under the aforesaid sections of the Indian Boilers Act.

3. The points urged by Mr. Bhupendranath Mitra, the learned advocate are that the learned Magistrate after dismissing the case under Section 204(3), Criminal P.C. had no jurisdiction to restore the same, as such dismissal previously on 19.6.1962 amounted to acquittal. Further it is contended that on the same facts, the accused petitioners could not be proceeded with in a second trial by virtue of the provisions of Section 403 of the Criminal P.C.

4. It appears that as soon as the complaint was. filed by the Chief Inspector of boilers on 30.3.1962, cognizance was taken by the learned Magistrate and summons was issued. As the complainant is a public-servant, he was not required to be examined before the learned Magistrate. On the next date fixed i.e., or 19.6.1962, it appears that the complainant did not comply with the provisions of Section 204 Sub-section (1-B) which provides that in a proceeding instituted upon an complaint, made in writing, every summons or warrant issued under Sub-section (1) shall be accompanied by a copy of such complaint. The learned Magistrate' recorded in his order dated 19.6.1962 that as even on the last date no copy was furnished, he dismissed the-complaint under Section 204, Criminal P.C. Thereafter on the petition of the Chief Inspector of boilers the-case was restored on 11.6.63 and fresh summons was ordered to be issued upon the accused persons under Sections 6(a), 6(c) and Section 18 of the Indian Boilers Act. Against these two orders the present petition has been) filed. I have already indicated before that the learned¹ Advocate contended that the order of dismissal amounts to an acquittal of the accused under Section 403 of the Code and as such the learned Magistrate was without jurisdiction to restore the case.

5. It appears that the learned Magistrate dis. missed the case because the mandatory provision as incorporated in Sub-section (1B) of Section 204 was not

complied with. The dismissal of the complaint was not done under Section 203 nor was any judgment pronounced under Section 369. In such circumstances, the question for consideration is whether the learned Magistrate was within jurisdiction to restore the case. The fact remains that the complaint was not dismissed for non-appearance of the complainant and as such this order cannot be construed to be an order under Section 247 of the Code. Accordingly in my opinion the dismissal of the complaint has not the effect of acquittal under Section 247. Section 403 of the Code Sub-section (1) provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237. In the instant case the accused petitioners have neither been acquitted nor, convicted after a regular trial was held. To plead *autrefois acquit* it must always appear that the accused have been legally acquitted of an offence. An acquittal may result from absence of a complainant under Section 247 or withdrawal of the complaint or a compounding of the offence under Section 345. Such statutory acquittals are acquittals within the meaning of Section 403 and as such I am of opinion that the order of the learned Magistrate dismissing the complaint under Section 204 does not come within the ambit of Section 403.

6. The next point for consideration is whether the Magistrate could revive the case after an order under Section 408(3) has been recorded. The law is now clear that dismissal order which remains unreversed, is no bar to the rehearing of the complaint by the same or by any other Magistrate. In the instant case it also appears that the order of dismissal cannot amount to a judgment and for the reasons given above it appears that the provisions of Section 403 cannot also be invoked.

7. In the above premises, my conclusion is that the restoration of the case by the learned Magistrate was not without jurisdiction, nor does the order of dismissal previously passed amount to *autrefois acquit*. The explanation of the learned Magistrate is accepted. Accordingly the Rule stands discharged.

8. It is regrettable that in this Court there has (been an inordinate delay in disposing of the revision application and I find that the learned Magistrate had in his mind to dispose of the case as quickly as possible. Accordingly I direct that as soon as the records are received by the Court below, steps should be taken to dispose of the case in accordance with law, as quickly as possible.

9. Let he records be sent down at once.

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